

requiring states to file business rate data unduly increase the administrative burdens on states associated with the rate review and expanded certification process? Is there any reason why the Commission should or should not concentrate solely on residential rates in assessing the state of rate comparability nationwide?

111. We also seek comment on whether we should collect data related to rates in non-rural areas served by non-rural carriers.³⁹⁴ While the rules we adopt today will result in the collection of some data regarding the rates in rural areas served by non-rural carriers, collecting non-rural rate data would provide the Commission with more complete data. To what extent would collecting rate information for non-rural areas in addition to rural areas provide the Commission with useful data to assess the reasonable comparability of rural and non-rural rates nationwide? To what extent would the collection of such data permit the Commission to assess the reason for high rural rates? For example, if a state's rates in areas other than rural areas were also above the benchmark, would it indicate that an adjustment to the federal support mechanism was warranted? To what extent would collecting non-rural rate information aid the Commission in assessing whether states are fulfilling their obligations to promote the Act's goals? To what extent would requiring states to file non-rural rate data unduly increase the administrative burdens on the states associated with the rate review process?

112. With additional rate data, should states be required to file information annually related to their efforts to advance universal service by adopting explicit universal service mechanisms, such as the establishment of explicit state universal service funds? To what extent would such information aid the Commission in assessing the sources of any problems with rate comparability to determine whether additional actions are necessary at the federal level? If we conclude that such information should be collected, what specific information should each state be required to file? For example, should each state be required to file data related to the existence and size of any explicit universal service support mechanisms established in the state? Should states be required to identify implicit support flows in the rate structure, including implicit support flowing from business line rates to residential line rates, from geographically averaged rates, and from intrastate access charges? Commenters should identify any other information related to the establishment of explicit universal service policies that would assist the Commission in refining our comprehensive plan for supporting universal service in high-cost areas over time.

B. Calling Scopes

113. We seek comment on the role of calling scopes in the rate review process. The foregoing Order permits a state to consider the calling scopes available in rural areas served by non-rural carriers when reviewing whether rates in those areas are comparable to urban rates nationwide.³⁹⁵ Calling scopes are not included in the rate template, however, and states need not consider them if they choose to certify based on the safe harbor. To what extent should states be

³⁹⁴ In this section, non-rural areas are those areas that are not "rural" as defined in the foregoing Order. *See supra* paras. 83-84.

³⁹⁵ *See supra* paras. 87 and 90.

encouraged to consider the calling scopes available in rural areas served by non-rural carriers in assessing rate comparability? Should the Commission incorporate calling scopes into the safe harbor? If so, how would the Commission do so? To what extent would consideration of calling scopes increase the burdens associated with the rate review process? Commenters should describe in detail any proposed methodologies for normalizing the impact of calling scopes on rates. Alternatively, should the Commission provide states with additional guidance as to how calling scopes may be factored into their rate comparability analyses, if states decide that this is appropriate? What data would be useful for analyzing the calling scopes available in rural and urban areas?

C. Procedures for Filing and Processing Any State Requests for Further Federal Action

114. Consistent with the Joint Board's recommendation, we recognize that the procedures for filing and reviewing state requests for further federal action should be as specific and predictable as possible, while also providing the necessary flexibility for each state to demonstrate the unique circumstances involved in its request.³⁹⁶ We also note that the Joint Board did not recommend a specific method for calculating any additional targeted federal support, if necessary, and the present record does not provide an adequate basis for us to determine an appropriate method.³⁹⁷ Accordingly, we seek comment below on several interrelated issues. First, we seek comment on the timing of state requests for further federal action. Second, we seek comment on the showing that a state should be required to make in order to demonstrate a need for further federal action. Third, we seek comment on the types of further federal action that may be provided to requesting states if the Commission determines that further federal action is necessary in a particular instance, including possible methods of calculating any additional targeted federal support.

1. Timing of Requests for Further Federal Action

115. The Joint Board recommended that the Commission develop exact procedures to be used in the filing and processing of requests for further federal action. We propose that a state should be permitted to make a request for further federal action only concurrently with the filing of its expanded certification regarding the comparability of its rural rates in areas served by non-rural carriers.³⁹⁸ We anticipate that any state request for further federal action will arise from the state rate review process and the expanded certification, and any state requests for further federal action are likely to rely on the same data. Therefore, we believe that requiring the filing of any state requests at the time of the expanded certification will promote administrative simplicity.

³⁹⁶ See *supra* para. 93; *Recommended Decision*, 17 FCC Rcd at 20736-37, 40, paras. 50, 56.

³⁹⁷ *Recommended Decision*, 17 FCC Rcd at 20736-37, para. 50. Several commenters raise questions in the record regarding the specific details of requests for further federal action, such as the conditions upon which further federal action would be provided and the means of calculating any additional targeted federal support.

³⁹⁸ See *supra* part IV.D.2.d. Such certifications will be filed according to the schedule set forth in section 54.313(d) of the Commission's rules

We seek comment on this proposal.

116. We also seek comment on how frequently a state should be required to seek further federal action if the state's request is granted the first time. Should a state be required to seek further federal action every year? Should further federal action be provided for a specified period of years? If so, should that period be dependent on the specific circumstances of a particular request?

2. Required Showings

117. We seek comment on the showings that a state should be required to make in support of a request for further federal action, in the interest of making the process as specific and predictable as possible. The Joint Board's *Recommended Decision* suggests that two showings should be required: (1) a demonstration that rural rates in non-rural carrier service areas in the state are not reasonably comparable to urban rates nationwide, including an analysis of the rates in the basic service template and other relevant factors; and (2) a demonstration that the state has taken all reasonable actions to achieve reasonable comparability of its rural rates to urban rates nationwide, including an explanation of how the requesting state has used any federal support currently received to achieve comparable rates and whether it has implemented a state universal service fund.³⁹⁹ We propose that these showings should be required in support of a state's request for further federal action. We further propose that each state should bear the responsibility of fully explaining the basis for each element of its showing. As discussed in the foregoing Order, each state has rate-setting jurisdiction and primary responsibility for ensuring rate comparability within its border and, therefore, is in the best position to explain any problems it may have in achieving rate comparability and the actions it has taken to address those problems.⁴⁰⁰ In addition to these showings, are there any additional types of showings that a state should be required to make in support of a request for further federal action? Should different showings be required for different types of further federal action (e.g., Commission action to address calling areas or quality of service where the state lacks jurisdiction)?

118. We also seek comment on what a state should be required to show to satisfy the first element of the Joint Board's recommended test, a demonstration that rural rates within the state are not reasonably comparable to urban rates nationwide. In making the required showing,

³⁹⁹ See *infra* para. 119. Specifically, the Joint Board recommended that a state requesting further federal action be required to show that it has already taken all actions reasonably possible and used all available state and federal resources to make basic service rates in rural areas served by non-rural carriers reasonably comparable, but that rural rates are nonetheless not reasonably comparable to urban rates nationwide. *Recommended Decision*, 17 FCC Red at 20736-37, para. 50. Factors to be addressed, pursuant to the Joint Board's recommendation, include, but are not limited to, "rate analysis and a demonstration why the state contends that rates are not reasonably comparable, any other factors that should be considered in evaluating rates; and a demonstration that the state has taken all reasonably possible steps to develop maximum support from within the state." *Id.* at 20740, para. 56. The Joint Board also recommended that the state should fully explain how it has used any federal support currently received to help achieve comparable rates and whether the state has implemented a state universal service fund to support rates in high-cost areas of the state. *Id.*

⁴⁰⁰ See *supra* paras 21-22, 76, 95.

to what extent should a state be permitted to rely on the presumption created by the nationwide urban rate benchmark? Should the Commission consider residential and business rates or only residential rates? What weight, relative to the presumption created by the rate benchmark, should the Commission accord additional non-rate factors that the state contends are relevant in determining whether rural rates in a state are reasonably comparable to urban rates nationwide?

119. Consistent with the Joint Board's recommendation, we also seek comment on what state actions should be considered reasonable and, therefore, necessary to support a request for further federal action for purposes of the second element of the Joint Board's recommended showing. In particular, we seek comment on the extent to which states must reform their universal service support mechanisms in order to be able to demonstrate that they have taken all reasonably possible actions to achieve rate comparability. In this regard, we note that the Act strongly favors explicit support mechanisms, which are less vulnerable to erosion in competitive markets than implicit support mechanisms.⁴⁰¹ Although states are not required to adopt explicit mechanisms to support universal service, we propose that a state that has not done so cannot be deemed to have taken all reasonably possible steps to support rate comparability within the state, the requirement recommended by the Joint Board. We seek comment on this proposal.

120. We further propose that, in order to enable the Commission to determine whether a state has made its universal service mechanisms explicit, a state requesting further federal action should be required to explain the extent to which it has made its universal service mechanisms explicit, and file supporting data, including rate data for residential and business lines in rural and urban areas served by non-rural carriers. We seek comment on these proposals. We also seek comment on the extent of reform that should be required for further federal action. Some commenters argue that it is necessary for states to rebalance their residential and business rates in order to eliminate implicit support flows.⁴⁰² For example, Wyoming has rebalanced its residential and business rates, while other states have not rebalanced rates. As a result, Wyoming's residential rates presumably will be higher than a state with comparable resources that has chosen to maintain implicit support flows through higher business rates. Should the rebalancing of residential and business rates be required in support of a request for further federal action?

3. Types of Further Federal Action

121. We seek comment on the types of further federal action that should be available to a requesting state if the Commission determines that further federal action is appropriate. The Joint Board recommended that further federal action could include additional targeted federal support, as well Commission action to address scope of local calling areas or quality of service where the state commission lacked the authority to do so.⁴⁰³ Are there any other types of further federal action that the Commission should consider in addition to the Joint Board's

⁴⁰¹ See *supra* para. 16 and note 35

⁴⁰² Qwest Comments at 7, SBC Comments at 22; Wyoming Comments at 8.

⁴⁰³ *Recommended Decision*, 17 FCC Rcd at 20736-37, para. 50.

recommendations? Should the Commission specify in advance all possible forms of further federal action, or, in light of the Joint Board's recommendation that the Commission provide maximum flexibility for states, should the Commission retain the ability to develop additional types of further federal action in response to the specific circumstances underlying a particular state's request?⁴⁰⁴ Are there any reasons that the Commission should not consider making certain types of federal action available on request?

122. We propose that any additional targeted federal support should equal a set percentage of estimated forward-looking wire-center costs in excess of two standard deviations above the average cost per line.⁴⁰⁵ We believe that a method for calculating any additional targeted federal support based on forward-looking wire-center cost estimates would be specific and predictable, and provide consistency with the non-rural support mechanism, which also uses model cost estimates to calculate and target support.⁴⁰⁶ We also believe that such a method would provide a fair and equitable means of determining any additional targeted federal support and avoid inappropriate incentives that might be created if we were to base any additional targeted federal support on rate levels in a particular area.⁴⁰⁷ Furthermore, a forward-looking cost estimate-based method would permit any additional support to be targeted specifically to high-cost wire-centers, consistent with the Joint Board's recommendation.⁴⁰⁸ We seek comments on this proposal. Is there another proposed method that, based on some measure other than forward-looking cost estimates, would provide a more appropriate basis for calculating any additional targeted federal support? If so, a commenter should describe the method with specificity and provide any relevant supporting data. If any commenters contend that a rate-based method would be more appropriate, they should support their contentions with a detailed explanation of how rate-based support would be calculated under their proposal and any relevant supporting data.

123. To determine any additional targeted federal support based on forward-looking cost estimates, we propose that any additional federal support should be provided to wire centers in qualifying states with costs per line exceeding a benchmark of two standard deviations from

⁴⁰⁴ *Id.* at 20740, para. 56; *see also* Wisconsin Comments at 2-4

⁴⁰⁵ The Joint Board did not specify any particular method of calculating any additional targeted support.

⁴⁰⁶ Although non-rural support is determined based on statewide averages, the forward-looking cost model estimates costs at the wire-center level--which are then aggregated to determine the statewide average cost estimate--and targets non-rural support to individual wire centers. *See supra* para. 24.

⁴⁰⁷ Using rates to calculate any additional targeted federal support would require the Commission to attempt to normalize the rates in different states in order to compare them. California Comments at 13-14; New York Comments at 3; AT&T Reply at 9. No specific method for normalizing rates has been suggested in the record.

⁴⁰⁸ *See Recommended Decision*, 17 FCC Rcd at 20736-37, paras. 50 & n.125. The Joint Board recommended that any additional targeted federal support be targeted and suggested that a wire-center basis would be an appropriate method of identifying high-cost areas. *Id.*

the average cost per line among all non-rural carrier wire centers nationwide.⁴⁰⁹ Based on recent forward-looking high-cost model results, a wire center with per-line costs that are two standard deviations above the average wire center would have an average cost per line of \$40.85, or 189 percent of the nationwide average cost per line.⁴¹⁰ Wire centers with costs per line exceeding the proposed nationwide average cost per loop would be very high cost wire centers in which it is likely to be more difficult to achieve rate comparability, despite otherwise sufficient state resources and federal support. Because most states have wire centers that exceed two standard deviations from the national average wire center cost per line, we believe that this benchmark would provide an effective means of calculating any additional targeted federal support for any qualifying state in a specific, predictable and consistent manner.⁴¹¹ We seek comment on this proposed method for calculating additional targeted federal support. Is two standard deviations an appropriate threshold for this purpose?

124. We also propose that any additional targeted federal support for eligible wire centers in qualifying states should be calculated as a set percentage of costs in excess of the benchmark.⁴¹² For example, if the Commission were to set the percentage at 5 percent of costs in excess of two standard deviations above the average and Wyoming were to qualify for additional targeted federal support, it would be eligible for approximately \$546,000. If the Commission were to set the percentage at 25 percent of costs in excess of two standard deviations above the average and Wyoming were to qualify, it would be eligible for approximately \$2,731,000 in additional targeted federal support.⁴¹³

125. We believe that this proposal is consistent with the current and past methodologies for determining high-cost support for non-rural carriers and would provide meaningful support to assist states in resolving any rate comparability issues that combined federal and state action have failed to resolve. Under the non-rural support mechanism, a non-rural carrier in a state with an average cost per loop for areas served by non-rural carriers that exceeds the cost benchmark of two standard deviations above the average is eligible for support for 76 percent of its costs in excess of the benchmark.⁴¹⁴ This percentage represents an estimate

⁴⁰⁹ The non-rural support mechanism, as amended in the foregoing Order, calculates support by comparing the statewide average cost per line, as estimated by the Commission's cost model, to a nationwide benchmark of two standard deviations above the average cost per line.

⁴¹⁰ These results are based a run of the Delphi version of the model, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 18 FCC Rcd 41 (2003), *recons. pending*, using 2001 year-end line count data. The nationwide average cost per line in this model run is \$21.67. Two standard deviations above the average wire center cost per line is higher in percentage terms than two standard deviations above the average statewide cost per line because wire center costs are dispersed differently than the statewide costs on which non-rural support is based.

⁴¹¹ We note that 48 states plus Puerto Rico have such high-cost wire centers.

⁴¹² In Appendix G, we set forth, for exemplary purposes, the amount of support that each state would receive, if eligible, at various percentages between 5 and 25 percent.

⁴¹³ See Appendix G.

⁴¹⁴ See *supra* note 180 and accompanying text.

of the costs above the benchmark that are assigned to the intrastate jurisdiction. Because any additional targeted federal support would supplement the non-rural support mechanism in order to address exceptional problems, we do not believe that it would be necessary that such support be provided for the same percentage of costs in excess of the benchmark as covered by the non-rural support mechanism.⁴¹⁵ We seek comment on what percentage of costs in excess of the benchmark should be supported for purposes of additional targeted federal support. Is there another proposed method of calculating any additional targeted federal support based on forward-looking cost estimates that would better address the purpose for which the support would be intended?

D. Additional Inducements for State Action

126. Finally, we seek comment on whether we should make additional targeted federal support available for high-cost wire centers in states that implement explicit universal service mechanisms. The purpose of this proposal is to create a positive incentive for states to reform their implicit universal service mechanisms. Under this proposal, as discussed below, any additional targeted federal support would be determined using a methodology similar to that proposed above in connection with state requests for further federal action. Unlike state requests for further federal action, states would not be required to demonstrate that combined state and federal efforts had failed to achieve rate comparability.

127. As discussed above, section 254 states a clear preference for explicit, rather than implicit, support, but the 1996 Act does not require states to adopt explicit universal service support mechanisms.⁴¹⁶ In the foregoing Order, therefore, we decline to adopt measures to require or induce all states to immediately remove implicit subsidies from intrastate rates through substantial increases in federal support. Nevertheless, we agree with commenters that states should be encouraged to replace implicit support with explicit support mechanisms that will be sustainable in a competitive environment.⁴¹⁷ To what extent should the Commission encourage states to replace their implicit universal service support mechanisms with explicit mechanisms? We seek comment on whether the Commission has an interest, other than the aspirational provisions of the Act, in states' decisions to adopt explicit mechanisms or to rely on implicit support flows. How do state universal service mechanisms, explicit and implicit, interact with the federal universal service support mechanisms? We note that some states have made progress in making explicit their universal service support mechanisms.⁴¹⁸ Can we expect states to adopt, in advance of or concurrently with the local development of competition, reforms that will reduce the vulnerability of the states' universal service mechanisms to competition? If states

⁴¹⁵ See *supra* para. 95.

⁴¹⁶ See *Seventh Report and Order*, 14 FCC Rcd at 8102, para. 45, see also *supra* para. 22. As discussed above, many states have adopted explicit universal service support mechanisms since passage of the 1996 Act, but most states continue to provide at least some implicit support to residential customers through their rate designs. See *supra* note 55 and accompanying text.

⁴¹⁷ See e.g., CUSC Comments at 12; SBC Comments at 4-7, 18-26; Qwest Comments at 7-10.

⁴¹⁸ See, e.g., Wyoming Comments at 2-3.

have not yet taken action to adopt explicit universal service mechanisms, can we assume that they will do so?

128. We seek comment on whether providing additional targeted federal support to states that replace implicit universal service mechanisms with explicit universal service mechanisms would be an appropriate means of inducing reforms of state universal service support mechanisms. The availability of additional targeted federal support would provide each state with a direct incentive to make its universal service support mechanisms explicit, rather than implicit. This method of inducement would pose less risk to our universal service goals than conditioning receipt of existing non-rural high-cost support on state action. Moreover, providing states that implement universal service reforms with additional targeted federal support might mitigate possible transitional issues associated with the replacement of implicit support with explicit support and encourage states to adopt a long-term approach to universal service. To what extent are there transitional issues associated with moving from implicit support mechanisms to explicit support mechanisms? If such transitional issues are a significant deterrent to state adoption of universal service reforms, should any additional targeted federal support be limited for the period of time during which the transition takes place? If commenters contend that another form of inducement would be better suited for achieving the Commission's goals, the commenters should provide a detailed explanation of their inducement.

129. We further propose that any additional targeted federal support that is provided to induce states to adopt explicit universal service mechanisms should be based on forward-looking wire-center cost estimates. Basing any additional targeted federal support on forward-looking cost estimates will make such support specific and predictable, consistent with the Act, and would target the support to high-cost areas, which may ease a state's implementation of explicit universal service mechanisms. Similar to the additional targeted federal support proposed above with respect to state requests for further federal action to achieve rate comparability, we propose that any additional targeted federal support provided for inducement purposes should be calculated based on a percentage of forward-looking costs in excess of a particular threshold for high-cost wire centers.⁴¹⁹

130. Specifically, we propose that, if a state meets the necessary conditions, it should receive additional targeted federal support equal to a specific percentage of costs in excess of two standard deviations above the average cost wire center. We seek comment on this proposed method of calculating additional targeted federal support for inducement purposes. We specifically seek comment on the appropriate percentage of costs in excess of the threshold that we should support with additional targeted federal support. We note that 48 states and Puerto Rico would have at least one wire center with costs per loop above the benchmark of the average cost per loop plus two standard deviations.⁴²⁰ We estimate that if the support amount were set at

⁴¹⁹ See *supra* paras. 123-124. We do not believe that there is any reason to assume that the same amounts of additional targeted federal support should be provided as further federal action to achieve rate comparability, discussed above, and to induce state action to adopt explicit support mechanisms.

⁴²⁰ New Jersey, Rhode Island and the District of Columbia do not have any high-cost wire centers with per loop costs exceeding this benchmark. See Appendix G. In contrast, Qwest's proposal would provide federal non-rural support to between 47 and 49 states. See Qwest Comments at 5. Qwest's preferred proposal would provide "Tier (continued....)

10 percent of costs exceeding the proposed high-cost wire center benchmark, the 48 states and Puerto Rico would be eligible to receive a total of approximately \$116 million if they met the conditions for additional targeted federal support, in addition to the support provided under the rules we adopt today.⁴²¹

131. Would the proposed methodology provide significant inducement to each state to reform its universal service mechanisms? Would the benefits of inducing state action to reform state universal service mechanisms outweigh the cost of the additional contributions to the universal service fund that this additional targeted federal support could entail? Commenters should address how this proposal relates to the Act's requirement that universal service should be sufficient to achieve the Act's goals and, specifically, that sufficiency requires that support should not exceed the amount necessary to achieve the Act's goals.⁴²²

132. We also seek comment on what showings a state should be required to make in order to receive any additional targeted federal support, if such an inducement mechanism were adopted. Above, we seek comment on what showings a state must make in support of a request for further federal action, in addition to showing the failure to achieve rate comparability. To what extent should the showings that a state is required to make in order to receive additional targeted federal support for inducement purposes differ from the showings the state should be required to make in order to demonstrate that it has taken all reasonably possible actions to achieve rate comparability? Should a state be required to show that it has established an explicit support mechanism of a particular size relative to the number of lines in the state or some other measure? Should a state be required to demonstrate that it has rebalanced its residential and business rates? Should a state be required to demonstrate that it has eliminated geographic rate averaging through implicit support flows? Are there any specific actions reasonably calculated to eliminate or reduce implicit support in intrastate rates that a state should be required to show?

VI. ORDER ON RECONSIDERATION

133. In this Order on Reconsideration, we address requests to reconsider portions of the *Ninth Report and Order* filed by AT&T Corp. (AT&T), the Puerto Rico Telephone Company, Inc. (Puerto Rico Tel. Co.), SBC Communications Inc. (SBC), Personal Communications Industry Association (PCIA), and the Wyoming Public Service Commission

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1" support based on wire center costs and "Tier 2" support based on statewide average costs, after taking into account Tier 1 support. See Qwest Joint Board Comments at 12-20 (filed April 10, 2002). If the Commission continues basing support on statewide average costs, Qwest argues that it must lower the benchmark to include more states. See Qwest Comments at 10-16.

⁴²¹ We note that about half the states have established explicit support mechanisms, but most still rely to some extent on geographic rate averaging, unbalanced residential and business rates, or other implicit support mechanisms. The amounts of additional targeted federal support potentially available to each state, if it qualified, at several points between 5 and 25 percent of costs over the proposed benchmark are set forth in Appendix G

⁴²² See *supra* para 37.

(Wyoming Commission).⁴²³

A. AT&T Petition

1. Background

134. In its petition, AT&T requests reconsideration of the rule governing calculation of non-rural high-cost support for a competitive eligible telecommunications carrier (CETC) providing service through unbundled network elements (UNEs).⁴²⁴ AT&T also requests that the Commission target non-rural high-cost support based on UNE zones, rather than targeting support to high-cost wire centers.⁴²⁵ Finally, AT&T requests that the Commission clarify that states, to comply with section 254(e) certification requirements, must direct carriers to spend non-rural high-cost support within the group of wire centers to which the support is targeted.⁴²⁶

2. Discussion

135. We deny AT&T's request for reconsideration of the rule governing calculation of non-rural high-cost support for a CETC providing service through UNEs. Section 54.307 of the Commission's rules provides that a CETC using UNEs to provide supported services will receive a level of universal service support not to exceed the price of the UNEs to which it purchases access.⁴²⁷ AT&T contends that there is no basis for maintaining this limitation of universal service support because the Commission adopted it as an interim measure pending implementation of a forward-looking support mechanism.⁴²⁸ Although the Commission emphasized in the *First Report and Order* that a forward-looking, more precisely-targeted support methodology should alleviate concerns that providing high-cost support to CETCs using UNEs would create uneconomic incentives,⁴²⁹ the Commission did not adopt the challenged limitation as an interim measure.⁴³⁰ AT&T's broader underlying argument that a CETC "should get the *full* measure of high-cost support that the incumbent had received for the line, regardless

⁴²³ AT&T Petition (January 3, 2000), Puerto Rico Tel. Co. Petition (January 3, 2000), SBC Petition (January 3, 2000), PCIA Petition (January 3, 2000) and Wyoming Commission Petition (January 3, 2000).

⁴²⁴ AT&T Petition at 1-5, *See Ninth Report and Order*, 14 FCC Rcd at 20480, para. 91.

⁴²⁵ AT&T Petition at 5-6

⁴²⁶ AT&T Petition at 7.

⁴²⁷ 47 C.F.R. 54.307; *see also First Report and Order*, 12 FCC Rcd at 8873, para. 174

⁴²⁸ AT&T Petition at 2-3.

⁴²⁹ *First Report and Order*, 12 FCC Rcd at 8872-73, para. 173.

⁴³⁰ *First Report and Order*, 12 FCC Rcd at 8933, para. 288, n.746 ("When the support is based on the forward-looking costs of serving lines in a particular geographic area, the carrier that serves the line, either the ILEC or the CLEC, will receive the support for that line, sharing only if the CLEC takes the loop as an unbundled network element at a rate less than the universal service support for that line.").

of whether the entrant is using entirely its own facilities or providing service via UNEs⁴³¹ is within the scope of the separate proceeding to comprehensively reexamine the Commission's rules governing portability of high-cost support, which is currently before the Joint Board.⁴³² We therefore decline to address that argument here, and emphasize that our denial of AT&T's petition for reconsideration here does not in any way prejudice what action we ultimately may take in the portability proceeding.

136. We also deny AT&T's request that the Commission require support to be targeted based on UNE zones and distributed on a uniform per-line basis within each zone. The Commission's rules target non-rural high-cost support to wire centers, but permit states to file waiver petitions to target support to other areas, such as UNE zones.⁴³³ The Commission determined that a wire-center targeting approach best suits the non-rural high-cost support mechanism.⁴³⁴ AT&T contends that states should be required to target support to UNE zones "so that support and the underlying costs of the elements used to provide service are more closely aligned."⁴³⁵ In achieving the different goals of deaveraging non-rural high-cost support and UNEs, however, we need not adopt identical approaches.⁴³⁶ Moreover, the Commission fully explained why it decided to target non-rural high-cost support to wire centers in the *Ninth Report and Order*.⁴³⁷ AT&T has presented no new arguments on reconsideration that persuade us to reconsider at this time the Commission's prior decision to target non-rural high-cost support on a wire-center basis.

137. Finally, we deny AT&T's request that the Commission clarify that non-rural high-cost support must be used in wire centers to which it is targeted. Under the Commission's rules, states must certify that high-cost support flowing to non-rural carriers within their territories will be used in a manner consistent with section 254(e) of the Act.⁴³⁸ AT&T asks the Commission to

⁴³¹ AT&T Petition at 4.

⁴³² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 22642 (2002) (*Referral Order*); *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, Public Notice, 18 FCC Rcd 1941 (2003) (*Referral Order Public Notice*).

⁴³³ 47 C.F.R. § 54.309(b) and (c); see *Ninth Report and Order*, 14 FCC Rcd at 20473, para. 76.

⁴³⁴ *Ninth Report and Order*, 14 FCC Rcd at 20471-72, para. 72 ("The cost model, by design, calculates costs at the wire center level. The wire center costs generated by the model can then be averaged together, as desired; at higher levels of aggregation, such as the UNE cost zone level.").

⁴³⁵ AT&T Petition at 5.

⁴³⁶ See *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, Low-Volume Long-Distance Users, CC Docket No. 99-249, Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962, 13054, para. 211 n.484 (holding that interstate access support and non-rural high-cost support need not be targeted on same basis in light of different goals of mechanisms).

⁴³⁷ *Ninth Report and Order*, 14 FCC at 20472-73, para. 75.

⁴³⁸ 47 C.F.R. § 54.313.

clarify that, in order to comply with this requirement, states must direct non-rural carriers to use support only within the wire centers to which it is targeted. Because non-rural high-cost support is intended to enable reasonably comparable intrastate rates, and states have primary jurisdiction over those rates, the Commission determined that states should decide how support will be used to advance the goals of section 254(e).⁴³⁹ We conclude that the requested clarification is inconsistent with the Commission's stated intention in the *Ninth Report and Order*.⁴⁴⁰ To the extent this argument overlaps with arguments raised in the pending Joint Board proceeding on portability of support, we emphasize that our decision here does not prejudge how we ultimately may resolve issues raised in the portability proceeding.

B. Puerto Rico Tel. Co. Petition

1. Background

138. In its petition, Puerto Rico Tel. Co. challenges the sufficiency of the non-rural high-cost support methodology implemented in the *Ninth Report and Order*.⁴⁴¹ Puerto Rico Tel. Co. maintains that its loss of intrastate high-cost support since the phasedown of interim hold-harmless support began in 2001 increases the challenges it faces in serving an insular area with high costs and low income levels.⁴⁴² Puerto Rico Tel. Co. points to Puerto Rico's low subscribership levels as evidence that the Commission should act to restore the intrastate support it has lost since the phasedown began. Specifically, Puerto Rico Tel. Co. requests that the Commission treat it as a "rural" carrier rather than as a "non-rural" carrier for purposes of

⁴³⁹ *Ninth Report and Order*, 14 FCC Rcd at 20482-83, para. 95.

⁴⁴⁰ *Ninth Report and Order*, 14 FCC Rcd at 20476-77, para. 83 ("states can direct carriers to spend the federal support in a manner consistent with section 254(e), *though not necessarily in the wire center to which the support was targeted*")(italics added); *id.* at 20482-83, para. 95 ("Because the support that will be provided by the methodology described in this Order is intended to enable the reasonable comparability of intrastate rates, and states have primary jurisdiction over *intrastate* rates, we find that it is most appropriate for states to determine how the support is used to advance the goals set out in section 254(e)").

⁴⁴¹ Puerto Rico Tel. Co. Petition at 2-3.

⁴⁴² Puerto Rico Tel. Co. does not qualify for non-rural high-cost support under the methodology adopted in the *Ninth Report and Order*. Before the transition to forward-looking support for non-rural carriers, Puerto Rico Tel. Co. received over \$40 million annually in intrastate high-cost support based on its embedded costs. *See supra* n. 71 and accompanying text. The Commission included in the *Ninth Report and Order* an interim hold-harmless provision that provided a gradual transition to the non-rural high-cost support mechanism. Under the hold-harmless provision, no carrier was to receive less support on a per-line basis than it would have received under the previous mechanism based on embedded costs. *Ninth Report and Order*, 17 FCC Rcd at 20474, para. 78. In the *Thirteenth Report and Order*, the Commission implemented a phasedown of the hold-harmless provision. *See Federal-State Joint Board on Universal Service*, CC Docket 96-45, Thirteenth Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 24422 (2000) (*Thirteenth Report and Order*). We note that Puerto Rico Tel. Co. continues to receive almost \$90 million annually in interstate support. *See Federal Universal Service Support Mechanisms Fund Size Projections and Contribution Base for the Fourth Quarter 2002*, Appendix HC 17 (Universal Service Administrative Company, August 1, 2003).

intrastate high-cost support because it serves an insular area.⁴⁴³ In the alternative, Puerto Rico Tel. Co. requests that the Commission revise the non-rural high-cost support mechanism so that support is both calculated and targeted on a wire-center basis with a cost benchmark adjusted according to the statewide subscribership rate.⁴⁴⁴

2. Discussion

139. We reject Puerto Rico Tel. Co.'s request for reconsideration of the non-rural high-cost support methodology adopted in the *Ninth Report and Order*. For the reasons discussed above, we find that the methodology reflects the appropriate division of federal and state responsibility for ensuring reasonable comparability of local rates in urban and rural areas served by non-rural carriers.⁴⁴⁵ The Commission previously rejected Puerto Rico Tel. Co.'s argument that it should be treated as a rural carrier for purposes of intrastate high-cost support because it serves an insular area. The Commission explained that large telephone companies such as Puerto Rico Tel. Co. "should possess economies of scale and scope to deal efficiently with the cost of providing service in their areas, and thus, the level of that support will be determined through a forward-looking mechanism."⁴⁴⁶ Puerto Rico Tel. Co. has not justified reconsideration of the Commission's prior decisions. In particular, Puerto Rico Tel. Co. has offered no evidence that the decline in its intrastate high-cost support has caused rate shock or rate comparability problems.⁴⁴⁷ We note that we do not address here Puerto Rico Tel. Co.'s request in an *ex parte* letter, filed on June 6, 2003, that the Commission create a separate category of "non-rural insular" carriers for purposes of intrastate high-cost support.⁴⁴⁸

⁴⁴³ Puerto Rico Tel. Co. Petition at 14-15. See also Puerto Rico Tel. Co. Petition for Reconsideration, CC Docket No. 96-45 (filed July 17, 1997); Proposal of Puerto Rico Telephone Company, CC Docket Nos. 96-45 and 97-160 (filed April 27, 1998).

⁴⁴⁴ Puerto Rico Tel. Co. Petition at 8-11. Puerto Rico Tel. Co. also requests that the Commission clarify that Long Term Support (LTS) was not affected by the *Ninth Report and Order* and will continue to be distributed as it has been in the past. We need not address this issue here as the Commission subsequently addressed the status of LTS in the *Thirteenth Report and Order* and the *MAG Order*. See *Thirteenth Report and Order*, 15 FCC Rcd at 24426, para. 9, *MAG Order*, 16 FCC Rcd at 19724-26, paras. 272-276.

⁴⁴⁵ See *supra* part IV.A.

⁴⁴⁶ *First Report and Order*, 12 FCC Rcd at 8946, para. 315. The *First Report and Order* noted that Puerto Rico Tel. Co. was the twelfth largest company, as measured by access lines, in the United States at the time. *Id.* at n.791. Puerto Rico Tel. Co. is now a Verizon subsidiary as a result of Puerto Rico Tel. Co.'s acquisition by GTE and the subsequent Bell Atlantic-GTE merger to form Verizon.

⁴⁴⁷ In 2000, the Commission rejected Puerto Rico Tel. Co.'s arguments that phasing down hold-harmless support would lead to rate shock in Puerto Rico, noting that the Puerto Rico Commission actually supported the phasedown. *Thirteenth Report and Order*, 15 FCC Rcd at 24428-29, para. 13 & n.47.

⁴⁴⁸ Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Gregory J. Vogt, Counsel for Puerto Rico Telephone Company, Inc., CC Docket Nos. 96-45, 00-256, 98-77, 98-166 (June 6, 2003) (*June 2003 Letter*). See also *Federal-State Joint Board on Universal Service Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 14 FCC Rcd 21177, 21232-35, paras. 135-140 (1999).

140. In addition, we are not persuaded that providing more high-cost support to Puerto Rico Tel. Co. would effectively address the underlying concern it identifies: low subscribership levels in Puerto Rico.⁴⁴⁹ As discussed above, the purpose of non-rural high-cost support is to ensure reasonable comparability of rates among states.⁴⁵⁰ Puerto Rico Tel. Co. has not shown that the low subscribership levels in Puerto Rico are related to local rate levels or that providing additional non-rural high-cost support would have any direct impact on subscribership levels.⁴⁵¹ As the Commission stated in the *Seventh Report and Order*, federal high-cost support is not the appropriate federal program for addressing issues of affordability and subscribership.⁴⁵² The Consumer and Governmental Affairs Bureau is committed to engaging in outreach to increase the awareness in Puerto Rico of our existing Lifeline and Link-Up programs. We also note that the Commission currently is considering whether to adopt income-based eligibility default standards for participation in Lifeline and Link-Up, which could have a significant effect on subscribership in Puerto Rico.

C. SBC and PCIA Petitions

141. SBC requests that the Commission require reporting of cost and line count data by carriers operating in territories of non-rural carriers on an annual rather than a quarterly basis. We dismiss the request to reduce the frequency of cost data reporting as moot, and deny the request to reduce line count reporting. In the *Rural Task Force Order*, the Commission amended section 36.611 of the rules to require non-rural carriers to submit loop cost data on an annual basis, rather than on a quarterly basis.⁴⁵³ Accordingly, we dismiss SBC's request to require reporting of cost data on an annual basis as moot. In the *Twentieth Order on Reconsideration*, the Commission clarified that carriers must report line count data quarterly in order to receive support on a regular quarterly basis.⁴⁵⁴ The Commission determined that non-rural high-cost support must be determined based on line reported on a quarterly basis "to ensure portability of

⁴⁴⁹ Puerto Rico Tel. Co. Petition at 2-3

⁴⁵⁰ See *supra* at para. 6.

⁴⁵¹ Puerto Rico Tel. Co. stated in the *June 2003 Letter* that its subscribership has dropped slightly (from 74.5% to 71.2%) since 2001: *June 2003 Letter* at 5—Overall subscribership in Puerto Rico, however, increased (from 74.2 % to 76%) from December, 1999 to November, 2002, apparently due to competition. See Centennial Communications Corp. Reply Comments to *Referral Order Public Notice*. In addition, other factors contribute to the low penetration rate in Puerto Rico, including the low per capita annual income level in Puerto Rico. *Id.* at 10.

⁴⁵² *Seventh Report and Order*, 14 FCC Rcd at 8097, para. 39 ("Affordability problems, as they relate to low-income consumers, raise many issues that are unrelated to the need for support in high-cost areas, and section 254(b)(3) reflects a legislative judgment that all Americans, regardless of income, should have access to the network at reasonably comparable rates")

⁴⁵³ *Rural Task Force Order*, 16 FCC Rcd at 11270, para. 59. The Commission found that, because the national average loop cost was frozen at \$240.00, NECA would no longer need to calculate the national average loop cost on a quarterly basis, and, thus, it would be unnecessary for non-rural carriers to file loop cost data on a quarterly basis.

⁴⁵⁴ *Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Twentieth Order on Reconsideration*, 15 FCC Rcd 12070, 12078, para. 18 (2000)(*Twentieth Order on Reconsideration*).

support among carriers.”⁴⁵⁵ SBC has not provided any new information or arguments on reconsideration that warrant alteration of the requirement of quarterly line count reporting.

142. We also deny the PCIA’s request that the Commission reconsider aspects of its decision in the *Ninth Report and Order* affecting the portability of non-rural high-cost support to mobile wireless CETCs.⁴⁵⁶ The issues raised by PCIA are within the scope of the separate proceeding to comprehensively reexamine the Commission’s rules governing portability of high-cost support, which is currently before the Joint Board.⁴⁵⁷ We emphasize that our denial of PCIA’s petition here does not in any way prejudice what action we ultimately may take in the portability proceeding.

D. Wyoming Commission Petition

1. Background

143. In its petition, the Wyoming Commission argues that the *Ninth Report and Order* fails to fulfill the comparability and sufficiency objectives of the 1996 Act.⁴⁵⁸ The Wyoming Commission explains that Wyoming’s customers pay local rates that are above the national average, yet non-rural high-cost support to the state has been reduced due to the changes implemented by the *Ninth Report and Order*.⁴⁵⁹ The Wyoming Commission maintains that it has done its share to promote competition in its state, including eliminating implicit subsidies and deaveraging unbundled elements and local prices, and that the Commission must do more to support universal service and to promote competition in the state. The Wyoming Commission asks that non-rural high-cost support be calculated at the wire center level rather than statewide.⁴⁶⁰ As an alternative, the Wyoming Commission asks that the Commission provide additional federal support where a non-rural carrier’s average forward-looking cost exceeds a designated threshold and the state has a universal service fund of a certain size.⁴⁶¹

⁴⁵⁵ *Id.*

⁴⁵⁶ In particular, PCIA requests that the Commission (1) allow wireless CETCs to self-certify that they will use non-rural high-cost support in a manner consistent with section 254(e), (2) clarify the terms “new” and “captured” in section 54.307 of the Commission’s rules, 47 C.F.R. § 54.307, (3) address how to determine a mobile wireless customer’s service location, and (4) define the term “working loop” in section 54.307, 47 C.F.R. § 54.307, as a working phone number with regard to wireless CETCs.

⁴⁵⁷ *Referral Order*, 17 FCC Rcd 22642; *Referral Order Public Notice*, 18 FCC Rcd 1941.

⁴⁵⁸ Wyoming Commission Petition at 4-5.

⁴⁵⁹ *Id.* at 2-5.

⁴⁶⁰ *Id.* at 5-9

⁴⁶¹ *Id.* at 9-12 Specifically, Wyoming recommends that the Commission provide additional federal funding when a non-rural carrier’s average forward-looking cost exceeds \$30 per month and the surcharge on intrastate revenues exceeds 4% for the state universal service fund. See *id.* at 11. We note that the Wyoming Petition also includes a request for a review of model inputs, specifically a review of loop lengths. *Id.* at 12-13. We do not (continued ..)

2. Discussion

144. The Commission commends the Wyoming Commission for implementing pro-competitive policies by deaveraging rates and eliminating implicit subsidies. We recognize that Wyoming is in a unique position as the only state with significant rural territories that has implemented such policies. However, we deny the Wyoming Commission's petition for reconsideration of the *Ninth Report and Order*. As we explain above, the distribution of support on a statewide basis in the non-rural high-cost support mechanism reflects the appropriate division of federal and state responsibility.⁴⁶² Statewide averaging also is consistent with the *Qwest* court's view that the Commission is not required by the Act to replace implicit state support with explicit federal support or to support the full costs of universal service.⁴⁶³ We conclude that the Wyoming Commission has not provided any new information or arguments on reconsideration that require us to alter our decision to determine support on a statewide basis, as the Joint Board recommended. As part of the rate review and expanded certification process described above in Section IV.D., each state will have the opportunity to request further federal action based upon a demonstration that, despite the state's best efforts, federal non-rural support and state action together have not achieved reasonable comparability of rural and urban rates.⁴⁶⁴ Wyoming therefore has an avenue to pursue its argument that additional support is warranted.

145. We also deny the Wyoming Commission's request to award additional support to non-rural carriers based on above-average costs and high state universal service contributions at this time. In the Further Notice, we propose to make available additional targeted federal support for states that adopt explicit universal service mechanisms.⁴⁶⁵ We anticipate that this proposal, if adopted, would help to address the concerns raised by the Wyoming Commission in its petition.

VII. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

146. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁴⁶⁶ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Remand Notice*.⁴⁶⁷ The

(Continued from previous page)

address this issue at this time because it concerns the model's inputs adopted by the Commission in the *Tenth Report and Order*, which is not before us in this Order. See *Tenth Report and Order*, 14 FCC Rcd 20156.

⁴⁶² See *supra* part IV.A

⁴⁶³ See *Qwest*, 258 F.3d at 1203-4

⁴⁶⁴ See *supra* part IV.D

⁴⁶⁵ See *supra* part V.

⁴⁶⁶ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁴⁶⁷ See *Remand Notice*, 17 FCC Rcd at 3012-5, paras. 30-41.

Commission sought written public comment on the proposals in the *Remand Notice*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁴⁶⁸

1. Need for, and Objectives of, the Report and Order

147. This Order is necessary to respond to the remand by the United States Court of Appeals for the Tenth Circuit of the *Ninth Report and Order* and also to respond to the Joint Board's *Recommended Decision*. Along with fulfilling the court's remand requirements, the objectives of this Order are to implement a non-rural high-cost support mechanism that fulfills the relevant principles in section 254(b) of the Act. The rules we adopt in this Order reflect the Commission's careful and considered determination to implement the mechanism consistently with section 254(b) and with the Joint Board's recommendations.

148. In this Order, we take the following actions in response to the Tenth Circuit's remand and the Joint Board's recommendations to modify the non-rural high-cost support mechanism and to induce states to ensure reasonably comparable rural and urban rates in areas served by non-rural carriers:

- Consistent with the Joint Board's recommendations, we reaffirm that comparing statewide average costs to a nationwide cost benchmark reflects the appropriate federal and state roles in determining federal non-rural high-cost support. We find no evidence in the record either for radically altering the current non-rural mechanism or for establishing a substantially larger federal subsidy to lower local telephone service rates, as some commenters advocate.
- In response to the Tenth Circuit's remand, we define the relevant statutory terms "sufficient" and "reasonably comparable" more precisely for purposes of the non-rural mechanism. As recommended by the Joint Board, we define "sufficient" in terms of the statutory principle in section 254(b)(3), as enough federal support to enable states to achieve reasonable comparability of rural and urban rates in high-cost areas served by non-rural carriers. We also agree with the Joint Board that the principle of sufficiency means that non-rural support should be only as large as necessary to achieve the statutory goals. We define "reasonably comparable" in terms of a national urban rate benchmark recommended by the Joint Board. As part of the rate review process discussed below, the rate benchmark will be used in determining whether a state's local rates in rural, high-cost areas served by non-rural carriers are reasonably comparable to urban rates nationwide.
- We modify the non-rural mechanism by basing the cost benchmark, which is used to determine the amount of non-rural high-cost support, on two standard deviations above the national average cost per line. Modifying the cost benchmark ties it more directly to the relevant data, consistent with the court's directive, but does not alter the level of non-

⁴⁶⁸ See 5 U.S.C. § 604

rural support in a major way. We agree with the Joint Board that the current level of non-rural support is supported by data from the GAO Report indicating that rural and urban rates generally are reasonably comparable today.

- To induce states to achieve reasonably comparable rates, we adopt with minor changes the rate review and expanded certification process recommended by the Joint Board. Each state will be required to review its rates in rural, high-cost areas served by non-rural carriers annually to assess their comparability to urban rates nationwide, and then to file a certification with the Commission stating whether its rural rates are reasonably comparable to urban rates nationwide or explaining why they are not.
- For purposes of the rate review process, we adopt the Joint Board's recommendation that we establish an annually-adjusted nationwide rate benchmark based on the most recent urban residential rates in the *Reference Book*, the Wireline Competition Bureau's annual rate survey. Specifically, we adopt a rate benchmark of two standard deviations above the average urban rate, which, based on the most recent *Reference Book* survey, is \$32.28 or 138 percent of the average urban rate. The rate benchmark will establish a "safe harbor," that is, a presumption that rates in rural, high-cost areas that are below the rate benchmark are reasonably comparable to urban rates nationwide. States with rural rates below the rate benchmark may certify that their rates are reasonably comparable without providing additional information, or rebut the presumption by demonstrating that factors other than basic service rates affect the comparability of their rates.
- For purposes of the rate review process, we also establish a basic service rate template for states to use in comparing rates in rural, high-cost areas served by non-rural carriers to the nationwide urban rate benchmark. In addition, we adopt, with slight modifications, the definition of "rural area" already contained in section 54.5 of the Commission's rules for purposes of the rate review process.
- We adopt the Joint Board's recommendation to permit states to request further federal action, if necessary, based on a demonstration that the state's rates in rural, high-cost areas served by non-rural carriers are not reasonably comparable to urban rates nationwide and that the state has taken all reasonable steps to achieve reasonable comparability through state action and existing federal support.
- In response to the Tenth Circuit's remand, we review and explain our comprehensive plan for supporting universal service in high-cost areas.
- In the attached Further Notice, we seek comment on issues related to the rate review and expanded certification process. In particular, we propose a method for calculating any additional targeted federal support that may be provided in response to a state request for further federal action, based on forward-looking cost estimates. Under this proposal, any such support would be targeted on a wire-center basis, based on a set percentage of per-line costs exceeding a threshold above the national average cost for wire centers.

- We also seek comment in the attached Further Notice on whether we should make additional targeted federal support available for high-cost wire centers in states that implement explicit universal service mechanisms, without regard to their achievement of rate comparability, in order to encourage states to adopt universal service mechanisms that will be sustainable in a competitive environment.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

149. The Commission received no comments specifically addressing the IRFA. Nonetheless, the Commission considered the potential impact of the adopted rules on small entities and, based on analysis of the relevant data, determined that the compliance burden for small entities directly impacted will not be significant.

150. We note that the Commission did receive some general small entity-related comments not specifically addressing the rules and policies presented in the IRFA. Some commenters suggested that eligible communications carriers (ETCs) should be treated differently than the incumbent non-rural carriers.⁴⁶⁹ CUSC stated that the certification process should apply only to the incumbent non-rural carriers.⁴⁷⁰ RICA stated that ETCs and incumbent non-rural carriers should receive support through separate mechanisms.⁴⁷¹ In making the determination reflected in the Order, we have considered the impact of our actions on these small entities. We have determined that any impact on small entities will be negligible.

151. Other small-entity related comments concerned the rural high-cost support mechanism and were not relevant to this Order, which modifies the non-rural high-cost support mechanism only.⁴⁷² The federal non-rural high-cost support mechanism, revised and implemented by this Order, calculates and distributes federal support to non-rural carriers providing service in high-cost areas. For purposes of the mechanism, "non-rural carriers" are those that do not meet the statutory definition of a rural telephone company.⁴⁷³ As stated above,

⁴⁶⁹ See Competitive Universal Service Coalition (CUSC) Comments; Rural Independent Competitive Alliance (RICA) Comments

⁴⁷⁰ See CUSC Comments at 8.

⁴⁷¹ See RICA Comments at 5.

⁴⁷² See e.g. NRTA and OPASTCO Comments.

⁴⁷³ *Ninth Report and Order*, 14 FCC Rcd at 20439, para. 2. Rural telephone carriers are defined as follows:

The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity --

- (A) provides common carrier service to any local exchange carrier study area that does not include either-
 - (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
 - (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
- (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(continued ..)

the rural and non-rural high-cost support mechanisms are separate.⁴⁷⁴

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

152. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that will be directly affected by the rules adopted herein.⁴⁷⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁴⁷⁶ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.⁴⁷⁷ Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).⁴⁷⁸

153. The Commission has determined that the group of small entities directly affected by the rules adopted in this Order are eligible telecommunications carriers (ETCs)⁴⁷⁹ providing service in areas served by non-rural carriers. Within the category of ETCs we find competitive local exchange carriers (CLECs), which are all wired telecommunications carriers, and wireless carriers. Further descriptions of these entities are provided below.

154. **Wired Telecommunications Carriers.** The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.⁴⁸⁰ According to Census Bureau data for 1997, there were

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(C) provides telephone exchange service to any local exchange carrier study areas with fewer than 100,000 access lines; or

(D) has less than 15% of its access lines in communities of more than 50,000 on February 8, 1996.

47 U.S.C. § 153(37). *See also First Report and Order*, 12 FCC Rcd at 8944, para. 310.

⁴⁷⁴ *See supra* at para. 25.

⁴⁷⁵ 5 U.S.C. § 604(a)(3).

⁴⁷⁶ 5 U.S.C. § 601(6).

⁴⁷⁷ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register."

⁴⁷⁸ 15 U.S.C. § 632.

⁴⁷⁹ *See infra* para. 157

⁴⁸⁰ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

2,225 firms in this category, total, that operated for the entire year.⁴⁸¹ Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 or more.⁴⁸² Thus, under this size standard, the great majority of firms can be considered small.

155. Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs) and "Other Local Exchange Carriers." Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers." The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁸³ According to Commission data,⁴⁸⁴ 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees.⁴⁸⁵ In addition, 55 carriers reported that they were "Other Local Exchange Carriers." Of the 55 "Other Local Exchange Carriers," an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees.⁴⁸⁶ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

156. Cellular and Other Wireless Telecommunications Carriers.⁴⁸⁷ The SBA has developed a small size standard for Cellular and Other Wireless Telecommunications Carriers which consists of all such companies having 1,500 or fewer employees. According to the Commission's most recent data,⁴⁸⁸ 1,761 companies reported that they were engaged in the provision of wireless service. Of these, 1,761 companies, and estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees.⁴⁸⁹ Consequently, the Commission

⁴⁸¹ U.S. Census Bureau, 1997 Economics Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517110.

⁴⁸² *Id* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

⁴⁸³ 13 C.F.R. § 121.201, NAICS code 517110.

⁴⁸⁴ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3 (May 2002).

⁴⁸⁵ *Id*

⁴⁸⁶ *Id*

⁴⁸⁷ 13 C.F.R. § 121.201, NAICS code 517212.

⁴⁸⁸ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3 (May 2002)

⁴⁸⁹ *Id*

estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted herein.

157. **Eligible Telecommunications Carriers (ETCs) that Provide Service in Areas Serviced by Non-Rural Carriers.** Neither the SBA nor the Commission has developed a definition of small entities specifically applicable to ETCs. ETC designation allows a carrier to receive universal service support in accordance with section 254 of the Act. An entity is designated as an ETC by a state commission or, if there is no state jurisdiction, by the Commission upon meeting the requirements of section 214(e) of the Act. Any entity offering services supported by federal universal service mechanisms that uses its own facilities or a combination of its own facilities and resale of another carrier's services and advertises such charges and rates can seek designation as an ETC.⁴⁹⁰ ETCs are competitive carriers that are not dominant in the field. The group of ETCs providing service in areas served by non-rural carriers is composed of mostly competitive local exchange carriers (CLECs) and wireless carriers. We have indicated above that, pursuant to SBA standards, ETCs are CLECs or wireless carriers. In addition, we note that the only ETCs affected by this Order are those that provide service in areas served by non-rural carriers. If we had no further information concerning the specific ETCs affected by this rulemaking, we would estimate that numerous ETCs, which are either CLECs or wireless service providers that provide service in areas served by non-rural carriers, are small businesses that may be affected by the rules adopted herein.

158. At this time, however, the Commission is aware of approximately 30 ETCs providing service in areas served by non-rural carriers. We have determined that at least 9 of these ETCs are subsidiaries of public companies – not independently owned and operated – and, therefore, not small businesses under the Small Business Act.⁴⁹¹ We do not have data specifying whether the remaining ETCs, or other ETCs not accounted for, are independently owned and operated, and therefore we are unable to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are 20 or fewer small entities that may be affected directly by the proposed rules herein adopted.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

159. This Order does not impose directly any change in projected reporting, record keeping or other compliance requirements on small entities. No changes have been made to the reporting or recordkeeping requirements of carriers receiving federal non-rural high-cost support.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

160. The RFA requires an agency to describe any significant alternatives that it has

⁴⁹⁰ 47 C.F.R. § 54.201

⁴⁹¹ 15 U.S.C. § 632.

considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”⁴⁹²

161. In this Order, in response to the Tenth Circuit’s remand and the Joint Board’s *Recommended Decision*, we modify the high-cost universal service support mechanism for non-rural carriers and adopt measures to induce states to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers. Our actions will affect the amount of support distributed to non-rural carriers and ETCs providing service in areas served by non-rural carriers. Based on our analysis of the relevant data, the Commission believes that there will be minimal, if any, economic impact on small entities in adopting modifications to the federal non-rural high-cost support mechanism and rate review and expanded certification process. The modifications to the current federal non-rural high-cost support mechanism, as adopted in the Order, should maintain or increase the current level of non-rural high-cost support to carriers receiving such support. As such, based on the relevant data, we anticipate little, if any, negative economic effects on any small businesses directly affected by the modifications to the non-rural high-cost mechanism implemented by this Order.

6. Report to Congress

162. The Commission will send a copy of the Order, including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.⁴⁹³ In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA (or summaries thereof) will also be published in the Federal Register.⁴⁹⁴

B. Paperwork Reduction Act Analysis

163. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reported and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the Federal Register of OMB approval.

⁴⁹² 5 U.S.C. § 603(c)(1)-(4)

⁴⁹³ See 5 U.S.C. § 801(a)(1)(A).

⁴⁹⁴ See 5 U.S.C. § 604(b)

C. Initial Regulatory Flexibility Act Analysis

164. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁴⁹⁵ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of policies and rules proposed in this Further Notice of Proposed Rulemaking (Further Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice.⁴⁹⁶ The Commission will send a copy of this Further Notice, including this IRFA, to the Chief Counsel of Advocacy of the Small Business Administration (SBA).⁴⁹⁷ In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.⁴⁹⁸

1. Need for and Objectives of the Proposed Rules

165. Consistent with the Tenth Circuit's remand of the *Ninth Report and Order* and the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), we modify the high-cost universal service support mechanism for non-rural carriers and adopt measures to induce states to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers in the Order.⁴⁹⁹ As discussed, the Further Notice is necessary to develop the record on specific issues that relate to the rate review and expanded state certification process recommended by the Joint Board.⁵⁰⁰ The rate review and expanded state certification process will fulfill the requirement of the Tenth Circuit remand by inducing state action to ensure that rates in rural and high-cost areas served by non-rural carriers are reasonably comparable to urban rates nationwide in compliance with section 254(b) of the Act.⁵⁰¹

166. First, in this Further Notice, we seek comment on whether we should require states to file, in connection with their reasonable comparability certifications, additional data that might enhance the Commission's ability to assess the non-rural mechanism and state actions to achieve comparability of urban and rural rates, including business rate data, urban rate data, and rate data from states that would not otherwise be required to file data under the rules we adopt today. Second, we seek comment on how to treat any state requests for further federal action, including procedures for states to submit any such requests; how to review required showings by requesting states; and how to calculate any additional targeted federal support. In addition, we

⁴⁹⁵ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁴⁹⁶ See *infra* para. 175.

⁴⁹⁷ See 5 U.S.C. § 603(a).

⁴⁹⁸ See 5 U.S.C. § 603(a).

⁴⁹⁹ See *supra* para. 1.

⁵⁰⁰ See *supra* part V.

⁵⁰¹ See *supra* part IV D.

propose a method for calculating additional targeted federal support on a wire-center basis using forward-looking model cost estimates. Finally, we also seek comment on a proposal to further encourage states to advance the Act's universal service goals by making available additional targeted federal support to states that implement explicit universal service mechanisms, without regard to their achievement of rate comparability.⁵⁰²

2. Legal Basis

167. The legal basis as proposed for this *Further Notice* is contained in sections 4(i), 4(j), 201-205, 218-220, 254, 403 and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 4(j), 201-205, 218-220, 254, 403, 410.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

168. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.⁵⁰³ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵⁰⁴ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.⁵⁰⁵ Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).⁵⁰⁶

169. We have described in detail, *supra*, in the Final Regulatory Flexibility Analysis, the categories of entities that may be directly affected by any rules or proposals adopted in our efforts to reform the universal service contribution system.⁵⁰⁷ For this Initial Regulatory Flexibility Analysis, we hereby incorporate those entity descriptions by reference.

⁵⁰² See *supra* part V.D.

⁵⁰³ 5 U.S.C. § 604(a)(3)

⁵⁰⁴ 5 U.S.C. § 601(6).

⁵⁰⁵ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register."

⁵⁰⁶ 15 U.S.C. § 632

⁵⁰⁷ See *supra* paras 152-158

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

170. Should the Commission decide that modifications must be made to the rate review and expanded certification process implemented above, the associated rule changes will only modify the reporting requirements of the state commissions. Based on our review of the process, such state reporting requirements have no direct effect on the federal reporting and recordkeeping requirements of telecommunications service providers regulated under the Communications Act, including any small business entities directly affected by the Order. No questions posed in the Further Notice consider any changes to the rules that would directly impose additional reporting, recordkeeping, and other compliance requirements on small business entities.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

171. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁵⁰⁸

172. The Commission does not foresee that any modifications to the rate review and expanded certification process resulting from this Further Notice will have a direct impact on any small business entities. Furthermore, based on the current data, we do not believe that the result in any area of the proposals under consideration will have a differential impact on small entities. In this Further Notice, however, the commenters may present the Commission with various proposals that may have varying impacts on small businesses. We seek comment on whether any proposals, if implemented, may result in an unfair burden. If there is such an unfair burden, we seek comment on how best to mitigate or eliminate it, as appropriate.

6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

173. None.

D. Initial Paperwork Reduction Act of 1995 Analysis

174. The *Further Notice* contains either a proposed or modified information collection from state commissions. As part of a continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Further Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at

⁵⁰⁸ 5 U.S.C. § 603(c).

the same time as other comments on the Further Notice; OMB comments are due 60 days from the date of publication of the Further Notice in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

E. Comment Filing Procedures

175. We invite comment on the issues and questions set forth in the Further Notice and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules,⁵⁰⁹ interested parties may file comments on or before 30 days after Federal Register publication of this Further Notice, and reply comments on or before 60 days after Federal Register publication of this Further Notice. All filings should refer to CC Docket No. 96-45. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁵¹⁰

176. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

177. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to

⁵⁰⁹ 47 C.F.R. §§ 1.415, 1.419

⁵¹⁰ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

178. Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street S.W., Room 5-B540, Washington, D.C. 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20054.

VIII. ORDERING CLAUSES

179. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201-205, 214, 218-220, 254, 403 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§151, 154(i), 154(j), 201-205, 214, 218-220, 254, 403 and 405, this ORDER ON REMAND is hereby ADOPTED.

180. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 C.F.R. Part 54, IS AMENDED as set forth in Appendix A attached hereto, effective thirty (30) days after their publication in the Federal Register. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

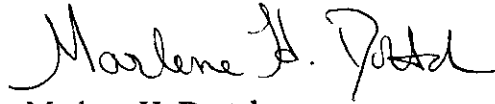
181. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201-205, 214, 218-220, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§151, 154(i), 154(j), 201-205, 214, 218-220, 254 and 403, this Further Notice of Proposed Rulemaking IS ADOPTED.

182. IT IS FURTHER ORDERED that, pursuant to section 1.106(j) of the Commission's rules, 47 C.F.R. §1.106(j), the Petitions for Reconsideration of the Ninth Report and Order and Eighteenth Order on Reconsideration filed by AT&T Corp., Personal Communications Industry Association, Puerto Rico Telephone Company, and the Wyoming Public Service Commission on January 3, 2000 are DENIED, and the Petition for — Reconsideration of the Ninth Report and Order and Eighteenth Order on Reconsideration filed by SBC Communications Inc. on January 3, 2000 is DENIED in part and DISMISSED AS MOOT in part.

183. IT IS FURTHER ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §154(i), and section 1.3 of the Commission's rules, 47 C.F.R. §1.3, the Petition for Waiver of Section 36.631 of the Commission's Rules Governing the Universal Service Fund, filed by the Vermont Department of Public Service and the Vermont Public Service Board, September 21, 1993, AAD 93-103, is DISMISSED AS MOOT.

184. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in dark ink, appearing to read "Marlene H. Dortch", with a stylized flourish at the end.

Marlene H. Dortch
Secretary